

MT LEGISLATIVE HISTORY

Chapter 551 1983

Bill H 565 S _____

Original bill & hist. ____C

H. Committee on Local Government

S. Committee on Judiciary

Hearing Date(s) 2-14 ____C

Hearing Date(s) 3-24 ____C

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____C

Date Out 2-15 ____C

____C

Rpt 2-15

Rpt 3-25

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

Page 5

Minutes of the Meeting of the Local Government Committee
February 14, 1983

REP. SWITZER: Do you think if the county had an option to trade some property with a transfer of minerals in exchange for property with minerals that it might be an important part of the transaction. If one party could transfer the minerals and the other couldn't, I can see taking that part out of here which would involve some indebtedness.

MR. HALVERSON: We would be having a professional appraiser appraise the value rather than the commissioners.

REP. VINGER: Why retroactive to 1975?

REP. COMPTON: Some deals have been made prior to this and they want to get their money.

CHAIRMAN McBRIDE closed the hearing on HOUSE BILL 634.

HOUSE BILL 565

REP. VINGER, sponsor, stated this bill would give the Clerks and Recorders the option to turn down illegible documents until they can be made legible.

PROPOSERS:

BILL ROMINE, representing the Clerks and Recorders, said this bill will ensure that documents recorded with the Clerk and Recorder are readable. He supported HOUSE BILL 565 (EXHIBIT 4).

GLENN KENNEY, President, Montana Land Title Association, supported passage of HOUSE BILL 565 (EXHIBIT 5).

JOANNE PEREA, Fort Benton, Montana Association of Clerks and Recorders, stated we want to assure what we are recording is retrievable information (EXHIBIT 6).

JOANNE McFARLANE, Jefferson County, Clerk and Recorder, supported HOUSE BILL 565.

OPPOSERS: None

REP. VINGER closed saying that we ought to have legible documents filed in our courthouses.

QUESTIONS:

CHAIRMAN McBRIDE: Am I to understand the Clerk and Recorder can refuse documents or do they accept it then and require a legible copy be submitted.

BILL ROMINE: The Clerk can refuse to accept the document.

Page 6

Minutes of the Meeting of the Local Government Committee
February 14, 1983

CHAIRMAN McBRIDE: Is it the intent of this bill to allow Clerks and Recorders to refuse documents.

BILL ROMINE: No, it is not; but in the event the document is not legible, they may refuse to accept it.

REP. HAND: What method of reproduction are you talking about?

BILL ROMINE: The state uses microfilm which can make a better copy than the original.

REP. VINGER: If a signature was not legible, would you ask them to produce a document later.

JEANNE McFARLANE: Yes.

CHAIRMAN McBRIDE closed the hearing on HOUSE BILL 565.

HOUSE BILL 611

REP. DONALDSON, sponsor, said this bill would have the counties publish notices that documents (minutes of commission meetings, all claims to be paid, and the county clerk's annual statement of financial condition) are available and the county would then send it to them rather than publish the full disclosure in the newspaper.

PROPOSERS:

BOB DECKER, County Commissioner, Lewis and Clark County, stated that the public has the right to know and all it takes is some initiative. He supported HOUSE BILL 611.

MIKE STEPHEN, Montana Association of Counties, stated even though this bill would pass, there are many counties that would arbitrarily publish what they are currently because of the demand of their constituents. He supported HOUSE BILL 611.

GEORGE BOUSLIMAN, Urban Coalition, stated this bill does make it clear that publication requirements are not eliminated. Any concern about the public's right-to-know is really eliminated through the way this bill has been drafted.

JIM HALVERSON, County Commissioner, Roosevelt County, spoke to support HOUSE BILL 611. All the bill is really asking is that the counties be put in the same status as the school districts and the cities. If they want to publish the record, they could.

TO: House Local Government Committee
FROM: Lee Heiman, Committee Counsel
DATE: February 14, 1983
RE: Summaries of House Bills 565, 596, 598, 611, 634, and 675

House Bill 565 (Vinger). Requires that materials to be recorded by the clerk and recorder must be legible and must be legible when reproduced.

House Bill 596 (Kadas). Provides for general appointment power in county commissioners to determine the number of members and terms of members on various county boards.

House Bill 598 (Seifert). Requires verification of the weight of sand, gravel, or crushed aggregate by a city council or county commission prior to payment. The purchasing section referenced delimits the amount under such contracts to over \$10,000 for both counties and cities.

House Bill 611 (Donaldson). Deletes the county printing of all claims and minute summaries each month and the annual financial statement of the clerk. Published is to be a statement that they are available for review, or for minutes, are available on request.

House Bill 634 (Compton). Allows for sale, exchange, or lease of mineral interests in land received by tax deed without an appraisal. Provides for retroactive application to July 1, 1975.

House Bill 675 (Koehnke). Establishes a procedure and protection for fighting a fire outside of a department's jurisdiction when the call was made by mistake or wrongfully. Provides for compensation to the department making the call unless there is a mutual aid agreement in effect.

MINUTES OF THE MEETING OF THE LOCAL GOVERNMENT COMMITTEE
February 15, 1983

The meeting of the Local Government Committee held on February 15, 1983 at 11:30 a.m. in Room 224A of the Capitol Building was called to order by Chairman Kathleen McBride. All members were present.

EXECUTIVE SESSION

HOUSE BILL 565

REP. VINGER, sponsor. This bill requires a determination of legibility for the recording of documents by the County Clerk and Recorder.

REP. VINGER: Moved HOUSE BILL 565 DO PASS.

REP. VINGER: Moved HOUSE BILL 565 be amended:

Strike: 1934
Insert: 1984

The motion PASSED UNANIMOUSLY.

REP. VINGER: Moved HOUSE BILL 565 DO PASS AS AMENDED.

REP. VINGER: It was brought out and proven by exhibits that are brought to be recorded that they are not legible. We should tighten the law so that we do get legible records on the books.

REP. WALLIN: In reviewing previous testimony--a party comes into the courthouse, five minutes to five, from out of town with an illegible document. To protect yourself, should some sort of receipt be made out indicating that the document was received and that another document is needed to replace the illegible one.

CHAIRMAN McBRIDE: Who is deciding if the document is legible and at what point do you have a legally recorded document.

REP. HAND: If that were to happen, wouldn't it be the Clerk and Recorder's prerogative to give the individual a receipt for the document and bring one back that was legible.

CHAIRMAN McBRIDE: That was what I questioned previously. The Clerk and Recorder has a document that is truly legal and they can refuse to take it.

Page 2

Minutes of the Meeting of the Local Government Committee
February 15, 1983

REP. VINGER: The intent of the bill is to refuse any document that is not legible. It does not say they have to refuse it. They could work something out with the individual.

The motion that HOUSE BILL 565 DO PASS AS AMENDED PASSED with REP. SWITZER and CHAIRMAN McBRIDE voting no.

HOUSE BILL 596

REP. KADAS, sponsor. This bill provides that Boards of County Commissioners, after notice and hearing, may determine number and term of office of members on appointed boards and commissions that provide local government services.

REP. KADAS: Moved HOUSE BILL 596 DO PASS.

REP. SALES: Moved to strike all of Section 13 and renumber.

The motion to amend HOUSE BILL 596 PASSED UNANIMOUSLY.

REP. KADAS: Moved to amend HOUSE BILL 596 as follows:

Page 1, line 25.

Following: "interest."

Insert: "If the board of county commissioners reduces the number of members or reduces the term of office of members on a board or commission, such a decision does not affect the term of office of current members of the board or commission."

The motion to accept the above amendment PASSED UNANIMOUSLY.

REP. KITSELMAN: Moved HOUSE BILL 596 DO NOT PASS AS AMENDED.

REP. SCHYE: As I understand the law, a city-county planning board has half city and half county members. Under this bill there are five city members and five county members. If we give this authority to the county, they could add three more members and outbalance the city and the city would have no recourse to add members to their side.

REP. KITSELMAN: The danger I see--if there is a problem with an appointed member, there could be a way of diluting that simply by adding more members to that board.

REP. KADAS: The city-county planning board is set up by an interlocal agreement. If the county did raise the numbers, they would have to change the interlocal agreement.

STANDING COMMITTEE REPORT

FEBRUARY 15

19 83

MR. SPEAKER

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 565

First reading copy (White)
color

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A DETERMINATION OF
LEGIBILITY FOR THE RECORDING OF DOCUMENTS BY THE COUNTY CLERK AND
RECORDER; AMENDING SECTION 7-4-2617, MCA."

Respectfully report as follows: That HOUSE Bill No. 565

DO-PASS

CONSIDERATION OF SENATE JOINT RESOLUTION 24: Senator Mazurek explained that Senate Joint Resolution 24 requests the Montana Supreme Court to establish a special committee to evaluate the existing venue statutes. This committee will be established by the Supreme Court and the State Bar. They will study the rules and see if they need to be updated to reflect reality. Senator Mazurek stated this study will not cost the State any money and will be done by people who deal with this subject on a daily basis. This Committee will report back to the Legislature with their findings. Senator Turnage reminded the Committee that this study will not be done by the Legislature.

There being no questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 565: Representative Vinger testified that this bill has been introduced in previous sessions but has been unsuccessful. Representative Vinger pointed out that the date on page 1, line 12, is 1984, not 1934. He brought this to the attention of the Committee because the printing on the bill is not clear. Representative Vinger testified that this bill is proposed because of the number of documents being submitted to Clerks and Recorders for recordation that are illegible.

PROPONENTS: Mr. Bill Romine, representing the Clerks and Recorders Association, submitted written testimony (see attached Exhibit "C"), and circulated copies of documents which have been recorded to illustrate to the Committee the necessity of HB565. (See attached Exhibit "D"). Mr. Romine testified that the illegibility of recorded documents has caused many problems in attempting to clear titles. Mr. Romine also stated that many people come from out of town to the county seat and are frustrated when they can't read a document. Mr. Romine feels that since a notary can refuse to notarize an illegible document, a Clerk and Recorder should be allowed to refuse to record an illegible document. Mr. Romine testified that being required to record illegible documents is a primary problem for Clerks and Recorders of Montana.

Ms. Jeanne B. McFarlane, Jefferson County Clerk and Recorder, submitted written testimony (see attached Exhibit "E") and testified that much of the problem with documents comes from persons making copies from copies until the document is illegible. Ms. McFarlane feels that HB565 will help future landowners.

Ms. Lorraine Molitor of the Madison County Clerk and Recorder's Office, submitted written testimony (see attached Exhibit "F") and testified that many documents are recorded on microfilm and used in courts of law. Ms. Molitor testified that she is reluctant

to certify a poor copy. Ms. Molitor also testified that many times a document is resubmitted for recording and this results in error. This error then has a "snowball effect" by causing a larger problem and can often result in a lawsuit. Ms. Molitor submitted copies of illegible documents submitted to her office for recording (see attached Exhibit "G"). Ms. Molitor testified that she believes HB565 is a good bill and is necessary to protect public interest and enable the Clerks and Recorders to do a better job.

Ethel M. Harding, Lake County Clerk and Recorder, submitted written testimony (see attached Exhibit "H") and submitted examples of poor-quality documents submitted to her office for recordation (see attached Exhibit "I"), and stated that she believes HB565 is better than any previous bills because of the deadline date provided. Ms. Harding urged the Committee to give the bill favorable recommendation.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek questioned how the Clerks and Recorders would handle the practical problem of recording an illegible document when that copy is the only one available. He was told that the Clerks and Recorders would record the document if it is labeled illegible or stated on the document that this is the only copy available.

There being no further questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 715: There being no proponents or opponents to HB715, the Committee decided it would confer with the Committee on State Administration and the Human Rights Commission about the proposed amendments. The hearing was then closed on HB715.

ACTION ON HOUSE BILL 609: Senator Berg moved that HB609 BE CONCURRED IN. This motion carried with Senator Daniels voting in opposition.

ACTION ON SENATE JOINT RESOLUTION 24: Senator Mazurek moved to DO PASS SJR24. This motion carried unanimously.

ACTION ON HOUSE BILL 608: Senator Halligan moved that HB608 BE CONCURRED IN. This motion carried unanimously.

FURTHER CONSIDERATION OF HOUSE BILL 565: Senator Daniels had questions as to who decides what is legible and what is illegible. The Committee decided that HB565 should be amended to provide that the Clerks and Recorders must attach a note to the recorded document stating that this document is illegible and the only copy available.

ACTION ON HOUSE BILL 565: Senator Crippen moved that HB362 BE RECONSIDERED. This motion carried unanimously. Senator Shaw moved that the proposed amendments BE ADOPTED. This motion carried unanimously. Senator Mazurek moved that HB362 BE CONCURRED IN AS AMENDED. This motion carried with Senators Daniels and Shaw voting in opposition.

FURTHER CONSIDERATION OF HOUSE BILL 191: Senator Turnage questioned the tax implications of HB191. He questioned the use of the word "common." Senator Mazurek did not like the use of the word "disposition."

ACTION ON HOUSE BILL 191: Senator Daniels moved that HB191 BE TABLED. This motion carried unanimously.

ACTION ON HOUSE BILL 856: Senator Mazurek moved that the proposed amendment to HB856 BE ADOPTED. This motion carried unanimously. Senator Berg moved that HB856 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 880: Senator Mazurek moved that a severability clause to HB880 BE ADOPTED. This motion carried unanimously. Senator Berg moved that HB880 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 357: Proposed amendments to HB357 were submitted to the Committee, and Senator Mazurek moved that these amendments BE ADOPTED. This motion carried unanimously. Senator Mazurek then moved that HB357 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

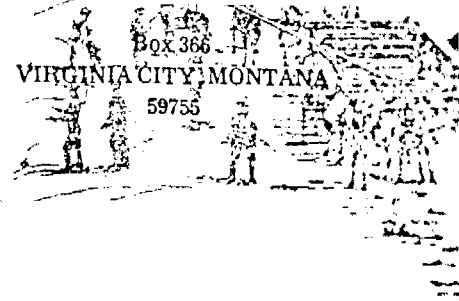
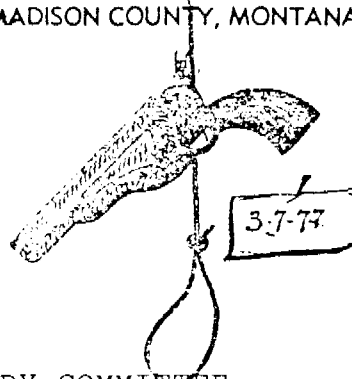
ACTION ON HOUSE BILL 540: Senator Shaw moved that HB540 BE TABLED. This motion failed. Senator Berg moved that the proposed amendments to HB540 BE ADOPTED. This motion carried with Senator Daniels voting in opposition. Senator Mazurek moved that HB540 BE CONCURRED IN AS AMENDED. This motion carried with Senators Galt, Shaw and Daniels voting in opposition.

ACTION ON HOUSE BILL 677: Senator Daniels moved that HB677 BE CONCURRED IN. This motion failed. Senator Daniels moved that

Office of County Recorder

MADISON COUNTY, MONTANA

LORRAINE P. MOLITOR
County Recorder



To: SENATE JUDICIARY COMMITTEE:
THE HONORABLE JEAN TURNAGE, CHAIRMAN, AND MEMBERS

FROM: Lorraine P. Molitor, Madison County Recorder

Re: H.B. No. 565

The Montana Association of Clerk and Recorders earnestly seek your support for H.B. 565. This bill, which would require that documents submitted for recording must be both legible and reproducible, is a bill that we have needed for a long time. We support this bill for the following reasons:

1. Almost all documents are now put on microfilm, copies are stored off premises for security backup, and others are held for public inspection in our offices. Lawyers, lending institutions, title companies and many other agencies and individuals consult these copies daily, and make copies, and copies of copies for use in their own businesses. Copies are often certified and used for documentation in courts of law, or in support of water rights, mining claim locations, annual representations, and for a multitude of other every day needs. It is one of our foremost frustrations, to be required to certify to poor copies and admit that they were made in our offices. County officials take pride in their work, but there is no satisfaction in handing out such copies.
2. Copies of documents are often recopied in other offices and portions of them, quite often land descriptions, are re-submitted for recording. Each copy is a little less clear than the last, finally resulting in a document that cannot be read or reproduced. Still such documents are being sent to us for recording. Land descriptions must be deciphered and drawn out in our Tract Index Books. This is a tedious, time consuming chore at best, resulting in headache, eye-strain and error. Errors made and copied, snow ball through the years leading to costly lawsuits and even loss of property.
3. This legislation would not effect existing documents, or those being held in escrow, since it applies only to instruments executed after 1 January, 1984.

4. Information in recorded documets is of vital importance since it pertains to property rights. We think that those rights should be protected.

5. Attached are the best possible copies that I could make of some of the records in our office. On some of them I have attached notices that the documents were not adequate for reproduction. I think it quite apropros that the copy of H.B. 565 attached is a "SECOND PRINTING", the first print copy having been "UNCLEAR".

We think that this is a good bill, one that we have needed for a long time. Please help us to do a better job for our constituents, and yours, by supporting us in the passage of H.B. 565. Help us to protect the public interest by allowing us to refuse to record sloppy, slipshod work that can easily be corrected before being recorded. Generations to come will thank you for it.

Respectfully submitted


Lorraine P. Molitor, County Recorder
Madison County, Montana

cc Bill Romine

STANDING COMMITTEE REPORT

March 25 1953

MR. President

We, your committee on Senate Judiciary

having had under consideration House Bill No. 565

(Vinger-Daniels)

Respectfully report as follows: That House Bill No. 565
Be amended as follows:

1. Title, line 6.

Following: "RECORDER"

Insert: "AND THE ADDITION OF A STATEMENT BY THE CLERK TO DOCUMENTS
CONSIDERED NO LIGIBLE"

2. Page 1, lines 12 and 13.

Strike: "executed after January 1, 1984, and"

3. Page 1, lines 15 through 19.

Strike: "the printed" on line 15, through "county clerk" on line 19.

Insert: "and accompanied by the required fee, he"

4. Page 1.

Following: line 23.

Insert: "(2) If the printed, written, or typed words or numbers are
considered by the clerk and recorder to be illegible and not legibly
reproducible, the clerk and recorder must affix to the recorded
document a statement that the document is illegible and not legibly

DO-PASS

Continued on page 2.

Senate Judiciary Committee

Re: HB565

Page 2

March 25, 1983

reproducible.

Renumber: subsequent subsections.

And, as so amended,
BE CONCURRED IN

J.A.